

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

LUKE RICHEY and JENNIFER
RICHEY,

Plaintiffs,

vs.

METAXPERT, LLC; PLAYXPERT,
LLC; and CHARLES MANNING and
KIMBERLY MANNING,

Defendants.

METAXPERT, LLC; and
PLAYXPERT, LLC,

Counterclaimants,

vs.

AARON LUKE RICHEY and
JENNIFER RICHEY; and GRAVITY
JACK, INC.,

Counterdefendants.

NO. CV-10-0020-LRS

**ORDER GRANTING MOTION FOR
RECONSIDERATION**

BEFORE THE COURT, is Counterclaimants' Motion for Reconsideration
Re: Order Re Motion to Quash, ECF No. 393, filed on July 28, 2011 and
noted without oral argument on September 23, 2011.

On July 18, 2011, the Court entered an Order (ECF No. 382) quashing
eleven investor Subpoenas issued by MetaXpert. MetaXpert now requests

1 the Court to reconsider its ruling because: 1) they have discovered new
2 information concerning communication(s) between plaintiffs and its
3 investors relevant to the claims, and 2) although they could
4 theoretically obtain the information from plaintiffs, they claim that
5 plaintiffs refuse to provide it. Also, MetaXpert points out that the
6 Court made a mistake as to Anthony LaMonica, for whom there was no
7 pending motion for the Court to quash his subpoena; Mr. LaMonica was a
8 Gravity Jack customer who received a customer subpoena; and Mr. LaMonica
9 never objected to his subpoena.

10 All the represented investors continue to object to the issuance of
11 the subpoenas. Investors Mark Barnes, Myron Bloom, M.D., Deborah Bloom,
12 Jeff Bosma, Caleb Clutter, David Fowler, Gale and Lucy Fowler, Rolf and
13 Erika Goetzinger, Lisa Henry, Kevin and Patti Kahl (collectively called
14 "Investors"), who are separately represented, argue that if there is a
15 dispute between plaintiffs and MetaXpert regarding production of
16 documents, then that should be decided by the Court on appropriate
17 motion and should not involve the investors. Investors assert that they
18 are friends and family members of the plaintiffs and should not be
19 burdened with the intrusion sought by Counterclaimants.

20 Further, it is argued, that each investor's investment amount has
21 no bearing on Counterclaimants' damages claim. The \$250,000 offering is
22 simply startup capital for a new business. Finally, the Investors
23 conclude, this is merely a discovery issue and dispute between these two
24 parties and Counterclaimants should instead move to compel and request
25 that the Court fashion a remedy, if, the information is somehow
26 relevant.

1 Motions for reconsideration serve a limited function. Under the
2 Federal Rules of Civil Procedure, motions for reconsideration may be
3 made pursuant to Rule 59(e). The major grounds for granting a motion to
4 reconsider a judgment are: (1) intervening change of controlling law;
5 (2) availability of new evidence; and (3) the need to correct clear
6 error or prevent manifest injustice. *School District No. 1J, Multnomah*
7 *County Oregon v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir.1993). A
8 motion for reconsideration is not appropriately brought to present
9 arguments already considered by the Court. *Backlund v. Barnhart*, 778
10 F.2d 1386, 1388 (9th Cir.1985).

11 Counterclaimants do not argue that there has been a change of
12 controlling law, but assert that newly discovered evidence, which the
13 court did not have the benefit of, is available. Specifically
14 Counterclaimants indicate that the newly discovered information is
15 relevant to their counterclaims in this case. Counterclaimants concede
16 that "[i]n theory, MetaXpert has more convenient and less burdensome
17 sources to obtain the information it seeks from the investors: Gravity
18 Jack and Luke Richey." (ECF No. 394, at 9). However, this information
19 has not been provided through any party or source thus far.
20 Counterclaimants also concede the scope of the subpoenaed confidential
21 and private information exceeds what was necessary.¹ The Court finds
22

23 "Upon further reflection, MetaXpert is willing to
24 compromise its request for specific financial details. If Gravity Jack
25 or Richey had contacted MetaXpert after receiving the subpoenas,
26 MetaXpert would have agreed to narrow the subpoenas to make it clear
27 that bank statements and copies of personal checks or other specific
28 financial information was not necessary, other than that MetaXpert is
looking to confirm who is and who is not an investor, in what amount,
because Gravity Jack refuses to disclose that information." ECF No.
362, at 25.

1 that Counterclaimants have made a showing of need and relevancy.

2 As to the Anthony LaMonica subpoena, it appears that the Court was
3 mistaken in quashing what appears to be unopposed subpoena to a Gravity
4 Jack customer rather than an investor.

5 The Court having considered the written argument of counsel, enters
6 this Order. Accordingly,

7 **IT IS ORDERED** that:

8 1. Defendants/Counterclaimants' Motion For Reconsideration, **ECF No.**
9 **393**, is **GRANTED, in part.**

10 2. The Investor Subpoenas shall be deemed amended to exclude
11 paragraphs II.3 and II.4, and the Investors shall respond thereto within
12 fourteen (14) calendar days from the date hereof.

13 3. Inasmuch as it was not the subject of a motion to quash, the
14 subpoena served on non-Investor Anthony LaMonica shall be responded to
15 by him within fourteen (14) days of the date hereof.

16 **IT IS SO ORDERED.** The District Court Executive is directed to
17 enter this Order and forward copies counsel.

18 **DATED** this 6th day of October, 2011

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20 ***s/Lonny R. Suko***

21 _____
22 LONNY R. SUKO
23 UNITED STATES DISTRICT JUDGE
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